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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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**NSTAR ELECTRIC AND GAS
CORPORATION,**

U.S. DISTRICT COURT
DISTRICT OF MASS.

Plaintiff,

Civil Action No.

v.

**UNITED STEELWORKERS OF
AMERICA, LOCAL 12004,**

Defendant

04 CV 11150 EFH

**DEFENDANT'S MOTION FOR SPEEDY HEARING
ON COMPLAINT FOR DECLARATORY RELIEF**

Pursuant to Fed. R. Civ. P. 57, Plaintiff NSTAR Electric and Gas Corporation ("NSTAR") moves that this Court order a speedy hearing on NSTAR's Complaint for Declaratory Relief, and advance the disposition of this Complaint on its calendar. The grounds in support of this motion are as follows:

1. On June 1, 2004, NSTAR filed a Complaint for Declaratory Relief, pursuant to 28 U.S.C. §§2201 and 2202, and Fed. R. Civ. P. 57, seeking a declaration from this Court regarding the arbitrability of a pending grievance under the current collective bargaining agreement (the "Agreement") between NSTAR and Local 12004 of the United Steelworkers of America ("Local 12004"). The grievance alleges that changes to retiree health benefits effective April 1, 2003 violated the Agreement. Gary Altman, Esq. is the Arbitrator in this matter.

2. Pursuant to Fed. R. Civ. P. 56(a), NSTAR intends to move for summary judgment on its Complaint at the expiration of twenty (20) days after the commencement of this action, or as soon as practicable thereafter. NSTAR contends that there are no genuine issues of material fact in

dispute, and that this matter is ripe for decision.

3. On or about January 23, 2004, Local 12004 and several retirees brought suit in this Court challenging the modification of retiree health benefits effective April 1, 2003 as a breach of the Agreement between NSTAR and Local 12004, in violation of Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 ("Section 301"), and several provisions of the Employee Retirement Income Security Act, 29 U.S.C. §1001 et seq. (Charles J. Senior, et al. v. NSTAR Electric and Gas Corporation, et al., Civil Action No. 04-10160-EFH). The breach of the Agreement alleged in the Complaint is identical to the alleged breach of the Agreement at issue in the grievance pending before Arbitrator Altman. NSTAR has answered the Complaint in this action. A scheduling conference is to be conducted in this matter on May 12, 2004.

4. On March 25, 2004, the first day of the arbitration was held before Arbitrator Altman. After NSTAR raised the issue of arbitrability, Arbitrator Altman ordered NSTAR and Local 12004 to brief the issue of whether the grievance could be arbitrated under the Agreement. Briefing on this issue has been concluded. No proceedings on the merits were conducted on March 25.

5. "[T]he question of arbitrability -- whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance -- is undeniably an issue for judicial determination. Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." AT&T Technologies, Inc. v. Communication Workers of America, 475 U.S. 643, 649 (1986).

6. A decision on NSTAR's Motion for Summary Judgment concerning the arbitrability of the pending grievance of Local 12004 should be expedited, because it is an issue for this Court to decide in the first instance. The Agreement does not clearly provide for the question of

arbitrability to be decided by an arbitrator.

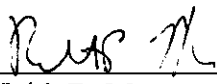
WHEREFORE, NSTAR prays that this motion be allowed, and that this Court order a speedy hearing on NSTAR's Complaint in this matter, including its forthcoming Motion for Summary Judgment, and advance the disposition of this action on this Court's calendar.

Respectfully submitted,

NSTAR ELECTRIC AND GAS CORPORATION,

By its Attorneys,

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Dated: June 1, 2004

CERTIFICATE OF SERVICE

I, Robert P. Morris, certify that on June 1, 2004, I caused to be served a copy of the within pleading by hand on counsel for Plaintiffs, Warren H. Pyle, Pyle, Rome, Lichten & Ehrenberg, P.C., 18 Tremont Street, Suite 500, Boston, MA 02108.


Robert P. Morris